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Wales

Marine Licensing Variation Decision

The Marine and Coastal Access Act (2009)

Applicant: Awel y Môr Offshore Windfarm Ltd

Variation application reference no: RML2323v2

**Awel y Môr Offshore Wind Farm Geotechnical
Survey**

27 March 2024

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OUR DECISION

Based on all the information available, and having regard to all relevant considerations NRW has decided to grant the variation to the Existing Marine Licence (see Annex 1) sought by the Variation Application.

This decision document:

- explains how the Variation Application has been determined,
- provides a record of the decision-making process; and
- sets out the reasons for any conditions imposed in connection with any marine licence granted pursuant to the Variation Application.

1 APPLICATION DETAILS

1.1 The Variation Application

Applicant name and address	The Applicant is the organisation set out below: Company: Awel y Môr Offshore Windfarm Ltd Company number: 02550622 Address: Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB
Variation Application reference number	RML2323v2
Existing Marine Licence reference number	RML2323v1
Date Variation Application was duly made	8 March 2024
Description of variation	<p>The existing Marine licence RML2323v1 allows for ground investigation campaign consisting of up to 68 boreholes, 98 CPTs and 30 vibro-cores, the current methodology consists of works taking place from a jack-up barge.</p> <p>A variation application has been submitted in order to allow an alternative methodology to be used within the intertidal area where it is not possible to use a jack-up barge, no changes are proposed to the licensed area currently defined within the existing licence. The alternative methodology is proposed to be used for 3 boreholes and 3 CPTs within the intertidal area and is expected to take a period of 4 days where location will be accessed by vehicle and bored using a drilling rig.</p>
Proposal[s] covered by the Variation Application	Offshore geotechnical investigation to characterise the site area for the proposed Awel y Môr Offshore Wind Farm. (the Project) .
Licensable marine activities	Removal Activities: - Up to 68 boreholes to a depth of 80m - 98 Cone Penetration Tests

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	- Up to 30 vibro-cores to a depth of 6m (the Proposed Activities)
Marine Plan area	Welsh inshore region and Welsh offshore region
Variation Application documents:	RML2323v2 – Application Form - 8 March 2024 RML2323v2 - PN234604 AYM Foreshore work CPP Rev02 – Construction Phase Plan RML2323v2 - 231905_AweIYMor_Onshore_GI_WB – onshore Written Scheme of Investigation for Archaeological and geoarchaeological monitoring and ground investigation. RML2323v2 – CPT Rig – information sheet RML2323v2 – CP Rig – information sheet RML2323v2 – AyM Outline Pollution Prevention and Emergency Incident response Plan Rev C

2 VARIATION APPLICATION PROCEDURE

2.1 The Variation Application

The Variation Application was accepted by Natural Resources Wales (**NRW**) considered duly made on 8 March 2024. This means we considered it was in the correct form and contained sufficient information for us to begin our determination, but not that it necessarily contained all the information we needed to complete that determination, and the documents considered may therefore include documents provided after the Variation Application was first made.

2.2 Documents considered

In reaching its decision, NRW has considered the documents listed in section 1 of this decision document along with such other information provided by the Applicant or received during any consultation, that NRW considered relevant.

2.3 Commercial Confidentiality

The Applicant made no claim that any information forming part of the Variation Application was subject to commercial confidentiality and we have not received any information in relation to the Variation Application that appears to be commercially confidential.

2.4 Publicity and advertising

The application sought to include an alternative methodology for the collection of samples within the intertidal area, the location and total extent of work being carried out remain the same as previously consented.

The Licence Holder, also hold a Development Consent Order (DCO) for the AweI y Mor Offshore Wind Farm. The order limit encompasses the intertidal area of works to which the variation application relates, and Article 15 allows for ground investigation works. The DCO went through public hearing and representation were made by the Local Authority during the determination of the DCO.

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Considering the above no further notice was given to Local Authorities and no Public Notice was advertised for this Marine Licence variation.

2.5 Environmental impact Assessment

Council Directive 2011/92/EU (as amended) on the assessment of the effects of certain public and private projects on the environment aims to protect the environment and the quality of life by ensuring that projects which are likely to have significant environmental effects by virtue of their nature, size or location are subject to an environmental impact assessment (EIA) before permission is granted.

The Marine Works (Environmental Impact Assessment) Regulations 2007 (“the Regulations”) transpose the EIA Directive in Wales and England for marine licence applications.

Having considered the Variation Application NRW has determined that it does not constitute a development requiring EIA under the Regulations.

3 CONSULTATION

3.1 Consultees

NRW considered it appropriate to reconsult the bodies listed in the table below on 12 March, due to their particular expertise and the responses received from them during the original consultation. These bodies were consulted for a period of 14 days. Those bodies have responded to the consultation an ‘Y’ can be found in the response received column, those who did not respond to consultation an ‘N’ can be found in the response received column:

Consultee	Response received (Y/N)	Date(s) of receipt
NRW Advisory	Y	22 March 2024
Royal Commission on the Ancient and Historical Monuments of Wales	Y	18 March 2024
Welsh Archaeological Trust	Y	18 March 2024

4 BASIS FOR OUR DECISION

In determining this variation application, including the terms on which it was granted, and the conditions attached to it, NRW has had regard to the factors set out in section 4 below in accordance with the 2009 Act.

Under the 2009 Act NRW is required to have regard to the following:

- the need to protect the environment (see sub-section 4.1);
- the need to protect human health (see sub-section 4.2);
- the need to prevent interference with legitimate uses of the sea (see sub-section 4.3);
- in the case of an application for a licence to authorise construction, alteration or improvement of works within the UK marine licensing area, the effects of any use intended to be made of the works in question when constructed, altered or improved (considered, if relevant in sub-sections 4.1 to 4.5 below);

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- any representations which it has received from any person having an interest in the outcome of the Variation Application (summarised in section 3 and where relevant considered in sub-sections 4.1 to 4.5 below); and
- such other matters as it thinks relevant (see sub-section 4.5 below).

4.1 The need to protect the environment:

The reference to the “environment” includes the local and global environment; the natural environment; and, by virtue of section 115(2) of the 2009 Act, any site of historic or archaeological interest. The natural environment may include the physical, chemical and biological state of the sea, the sea-bed and the sea-shore, and the ecosystems within it, or those that are directly or indirectly affected by an activity, whether within the marine licensing area or otherwise.

In considering the need to protect the environment we have considered the relevant environmental legislation set out below.

4.1.1 Water Framework Directive, Groundwater Directive and Water Environment Regulations

(a) The legal framework

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (**Water Environment Regulations**) implement the requirements of the Water Framework Directive (**WFD**) (Directive 2000/60/EC) which requires consideration as to whether that proposals for development may cause deterioration or prevent a water body from achieving ‘good status’. Proposals likely to cause deterioration or prevent a waterbody from achieving good status should be rejected, unless derogation procedures have been applied.

Under the Water Environment Regulations, NRW must exercise its relevant functions to ensure compliance with the requirements of the WFD, the Environmental Quality Standards Directive (Directive 2008/105/EC) and the Groundwater Directive (Directive 2006/118/EEC).

(b) Factors relevant to our determination

NRW has considered the potential effect of the Proposed Activities on the following WFD waterbodies:

- North Wales [*GB641011650000*]

The Water Framework Directive Compliance Assessment conducted as part of the determination of RML2323 has been reviewed and updated to take account of the additional methodology proposed as part of this Variation Application. The conclusion of the WFD assessment remain the same.

Based on this assessment it is considered that the Proposed Activities when considered alone and in combination, will not pose a risk to deterioration in the status of the above listed waterbody or jeopardise its attainment of good surface water status.

Further details are described within the Water Framework Directive Compliance Assessment.

4.1.2 Biodiversity and resilience of ecosystems duty

(a) The legal framework

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Section 6 of the Environment Wales Act 2016 requires that we seek to maintain and enhance biodiversity in the exercise of our functions, and in so doing promote the resilience of ecosystems, in a manner that is consistent with the proper exercise of our functions.

(b) Factors relevant to our determination

NRW A note that sensitive habitats have been identified approximately 400m from the site boundary, and welcome the access route detailed within the Construction Phase Plan which look to avoid sensitive habitats.

NRW is satisfied that in this case, we have taken into account and had due regard to this duty in so far as it is consistent with the function of determining an application for a Marine Licence under the Marine and Coastal Access Act 2009.

4.1.3 European Protected Sites and Ramsar Sites

(a) The legal framework

European sites are those designated under the Conservation of Habitats and Species Regulations 2017 (**Habitats Regulations 2017**) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (**Offshore Habitats Regulations 2017**) as Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).

The Habitats Regulations 2017 and the Offshore Habitats Regulations 2017 require that any project that is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) must be subject to an appropriate assessment. NRW undertakes a Habitats Regulation Assessment (HRA) to establish whether an appropriate assessment is required.

In addition NRW must exercise its functions under the 2009 Act so as to secure compliance with the requirements of the relevant European Directives. NRW also has a duty under the Habitats Regulations 2017 to support wild birds by protecting habitats and avoiding pollution.

A Ramsar site is a wetland which has been designated under the Ramsar Convention. The Ramsar Convention does not place specific legal requirements on its parties (though Ramsar sites are often SSSIs or SPAs, considered below), however Ramsar status is considered by NRW as matter of policy in its decision making.

(b) Factors relevant to our determination

The potential of the Project to impact the following European Protected Sites was considered:

- *Dee Estuary SPA*
- *Dee Estuary SAC*
- *Dee Estuary Ramsar*
- *Liverpool Bay SPA*
- *Menai Strait and Conwy Bay SAC*

The Habitat Regulations Assessment conducted as part of the determination of RML2323 has been reviewed and updated to take account of the additional methodology proposed as part of this Variation Application, NRW Advisory as the Statutory Nature Conservation Body were consulted on the updated HRA.

The HRA concluded that the Proposed Activities, either alone or in combination with other plans or projects, will not adversely affect the integrity of European Sites.

4.1.4 European Protected Species

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(a) The legal framework

The Habitats Regulations 2017 and the Offshore Habitats Regulations 2017 also confer protection on certain designated species (European Protected Species). A licence (EPS licence) must be obtained in order, whether deliberately or accidentally, to capture, kill, disturb or injure such a species, damage or destroy their breeding or resting places or obstruct access to their resting or sheltering places.

(b) Factors relevant to our determination

NRW considers that no protected species are likely to be impacted by the Project.

Any determination made as part of this decision are without prejudice to the consideration NRW is required to give an EPS licence application as the body with a statutory responsibility for its determination and do not constrain or bind NRW in exercising this function. Should an application for an EPS licence in relation to the Project be made it will be determined by NRW based on all the relevant information available to NRW at that time.

4.1.5 Marine Conservation Zones

(a) The legal framework

Marine Conservation Zones (MCZ) were established under the 2009 Act to protect nationally important, rare or threatened habitats and species. The only currently designated MCZ in Wales is Skomer.

Under the 2009 Act, NRW must exercise its functions in the manner which it considers best furthers the conservation objectives stated for any MCZ or, where that is not possible, in the manner which it considers least hinders the achievement of those objectives.

(b) Factors relevant to our determination

NRW is satisfied that there is no significant risk of the Proposed Activities on the Skomer MCZ.

4.1.6 Sites of Special Scientific Interest (SSSIs)

(a) The legal framework

Sites of Special Scientific Interest are designated under the Wildlife and Countryside Act 1981 (**1981 Act**) and protected by law to conserve their wildlife or geology. NRW must take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which an SSSI is of special scientific interest.

(b) Factors relevant to our determination

NRW is satisfied that there is no impact pathway to any SSSI.

4.1.7 The Waste (England and Wales) Regulations 2011

(a) The legal framework

The Waste (England and Wales) Regulations 2011 (as amended) establish a legal framework for treating waste. This is designed to protect the environment and human health by emphasising the importance of proper waste management, recovery and recycling techniques to reduce pressure on resources and improve their use. Waste generated by a project or activity must in general terms be

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dealt with in an environmentally friendly way. To achieve this the regulations describe a waste hierarchy which gives an order of preference for how waste is dealt with (prevention, re-use, recovery for other purposes such as energy, and finally disposal).

(b) Factors relevant to our determination

NRW is satisfied that the Proposed Activities meet the requirements of The Waste (England and Wales) Regulations 2011.

4.1.8 Other matters in considered relevant to the need to protect the environment

Historic Environment

As detailed within the variation application, an Onshore Written Scheme of Investigation (WSI) has been produced in consultation with Clwyd Powys Archaeological Trust. Although titled 'onshore' the Written Scheme of Investigation encompasses the intertidal area. The onshore WSI provides details of the geoarchaeological watching brief methodologies that will be undertaken, this will include the monitoring of 2 of the boreholes proposed within the intertidal area.

Both RCHAMW and WAT were consulted on the proposed Variation, and confirmed they had no concerns surrounding the proposed change to methodology for sediment sampling within the intertidal area.

Adherence to the Onshore Written Scheme of Investigation (WSI) has been secured with the Development Consent Order for Awel y Môr Offshore Wind Farm Article 12. Additionally the WSI will be included within approved supporting documents for this Marine Licence.

Pollution Prevention

As detailed within the variation application, the Outline Pollution Prevention and Emergency Incident Response Plan for the Awel y Môr development was submitted. The Outline plan detail pollution prevention measure that will take place as part of the ground investigation works covered by the variation application. Adherence to the outline Plan for pre-commencement works including ground investigation has been secured within the DCO Article 10(4). Additionally the Outline Pollution Prevention and Emergency Incident Response Plan will be included within approved supporting documents for this Marine Licence.

As detailed in decision document for the determination of RML2323 NRW Permitting Service considers it appropriate to include general pollution prevention control licence conditions to minimise impacts on the marine environment.

Conclusion of our considerations under the need to protect the Environment

IN SUMMARY, having considered the need to protect the environment, NRW does not consider that any impacts of the Project on the environment (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the Variation Application.

4.2 The need to protect human health

No comments or representations were received in relation to the need to protect human health and no other concerns in this regard have been identified.

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4.2.1 Conclusion of our considerations under the need to protect human health

IN SUMMARY, having considered the need to protect human health, NRW does not consider that any impacts of the Project (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the Variation Application.

4.3 The need to prevent interference with legitimate uses of the sea

Legitimate uses of the sea include (but are not limited to): navigation (including taking any steps for the purpose of navigational safety); fishing; mineral extraction; and amenity use.

The change in method proposed in the Variation Application are not predicted to change the potential impact of works on legitimate users of the sea to that which was considered during the determination of RML2323. As detailed in decision document RML2323 NRW Permitting Service considers it appropriate to include licence conditions to ensure the safety of navigation which includes ensuring all relevant parties are notified prior to the commencement of Licensed Activities.

4.3.1 Conclusion of our considerations regarding the need to prevent interference with legitimate uses of the sea

IN SUMMARY, having considered the need to protect interference with legitimate uses of the sea, NRW does not consider that any impacts of the Project (either alone or in combination with other plans or projects) are sufficient on their own to justify refusal of the Variation Application.

4.4 Marine Policy Documents

(a) The Legal framework

NRW is required to take its decision in accordance with the appropriate marine policy documents unless relevant considerations indicate otherwise.

UK Marine Policy Statement 2011 (MPS)

The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment.

Welsh National Marine Plan (WNMP)

The WMNP is the Marine Plan for the Welsh inshore region and the Welsh offshore region and sets out the Welsh Government's policies for and in connection with the sustainable development of this area.

(b) Our determination

UK Marine Policy Statement 2011

This decision has been taken in accordance with marine policy as set out in the UK Marine Policy Statement 2011.

Welsh National Marine Plan

The conclusion presented within Decision Document RML2323 surrounding the WNMP remain applicable to this variation application.

This decision has been taken in accordance with marine policy as set out in the Welsh National Marine Plan.

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4.5 Other matters NRW thinks relevant

4.5.1 Well-being of Future Generations (Wales) Act 2015

(a) The legal framework

In making its decision, NRW is required to take all reasonable steps to meet its published well-being objectives, which are designed to maximise NRW's contribution to achieving each of the well-being goals set out in the Well-being of Future Generations (Wales) Act 2015. NRW must also act in accordance with the principles of sustainable development.

(b) Our determination

NRW has taken into account its well-being objectives and is satisfied that its decision is consistent with meeting those objectives.

4.5.2 Sustainable management of natural resources

(a) The legal framework

NRW's general purpose is to pursue the sustainable management of natural resources in relation to Wales and applying the principles of sustainable management of natural resources as set out in section 4 of the Environment (Wales) Act 2016 so far as consistent with the proper exercise of its functions.

(b) Our determination

NRW is satisfied that this decision, when implemented in accordance with the attached conditions, is consistent with its general purpose of pursuing the sustainable management of natural resources in relation to Wales, and applying the principles of sustainable management of natural resources.

5 Conclusions and Recommendations

Based on all the information available, and having regard to all relevant considerations including the consultation responses, NRW's decision is to grant the variation to the Existing Marine Licence sought by the Variation Application. We have reached this decision having had regard to the relevant legal framework outlined in section 4 and have also explained in section 4 how each of the legal requirements have been considered. NRW has determined that a Marine Licence for the Proposed Activities should be granted.

AUTHORISATION

Report by: Peter Morrison	Date: 25/03/2024	Signed: Peter Morrison
Position: Lead Specialist Officer (Marine Licensing)		
Authorised by: Maria Alvarez	Date: 27/03/2024	Signed: Maria Alvarez
Position: Lead Specialist Officer (acting Marine Licensing Team Leader)		

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ANNEX 1 – Variation to the Marine Licence

The following documents have been included within section 2.3 Approved Supporting Documents of the Marine Licence to account for the variation;

- RML2323v2 – Variation Application Form
- RML2323v2 – PN234604 AYM Foreshore work Construction Phase Plan
- RML2323v2 Awel y Mor Onshore Ground Investigation Written Scheme of Investigation
- RML2323v2 Awel y Mor Outline Pollution Prevention and Emergency Incident Response Plan